D.B. CIVIL SPECIAL APPEAL (W) NO.752/06
(M/s Kewal Industries Vs. Rajasthan State Industries Development & Ors.)

Date of order : 19.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.R. Mehta, for the appellant.

We have heard learned counsel for the appellant.

Learned Single Judge has dismissed the writ petition filed by the appellant referring to decision rendered in SB Civil Writ Petition No.3106/2002 filed by M/s Anand Food Products considering it to be governed by the decision rendered by Division Bench in DB Civil Special Appeal arising out of the aforesaid judgment.

Review against the same was also dismissed finding that the special appeal against the order of the learned Single Judge in SB Civil Writ Petition No.3106/2002 has since been dismissed on 14.2.2005.

Learned counsel for the appellant urged that on facts the case of the present petitioner-appellant is distinguishable and the judgment rendered in M/s Anand Food Products's case cannot be made applicable

to the facts of the petitioner's case.

It was pointed out by the learned counsel that while the petitioner was original applicant for the full plot ad-measuring 4000 sq. meter of plot No.64B and money was deposited as per the demand made by the respondents along with the application for allotment of such plot whereas in the case of M/s. Anand Food Products Ltd., the initial application was not for allotment of Plot No.64-B but was for the allotment of plot ad-measuring 1000 sq. meter. It was only after the application was moved and money was refunded and petitioner has made application for allotment of a plot that he has given an option for allotment of plot No.64-B also. He had referred to facts mentioned in detail in the case of M/s. Anand Food Products. Judgment of which has been reported in DNJ (Raj) 2005 (3) 1591.

It is also submitted by the learned counsel for the appellant that the fact that high tension electricity line is passing through the plot in question cannot be a ground for refusal to allotment of plot to the petitioner because large number of other plots are there through which high tension electricity line is passing yet the same have been alloted.

Having considered the submission made by the

learned counsel for the appellant and the ratio of the decision rendered in M/s Anand Food Products (supra), the distinction pointed out by the learned counsel for the appellant does not make a difference. As a matter of fact in the aforesaid judgment, Division Bench has noticed the chronology of the facts which has led to filing of the special appeal and the history prior to the petitioner's case. In M/s Anand Food Products's case, other parties along with the present petitioner were directed to make representation to RIICO for the purpose of seeking allotment of land in question. In the aforesaid judgment after specifically noticing the fact that SB Civil Writ Petition No.439/1993 along with two other writ petitions, one of which was by the present appellant, have been preferred by three different applicants for the allotment of plot, the Court directed the petitioners in each case to make representation to the RIICO within four weeks from the date of the judgment. The judgment in three writ petitions was rendered on 19.4.2002.

Thus, after 19.4.2002, that was a common journey for all the petitioners whose writ petitions were disposed of by learned Single Judge. The present petitioner was one of the three writ petitioners whose petition was decided by the learned Single Judge on 19.4.2002 is not a fact in dispute. Thus, making of representation before RIICO and consideration thereof was to proceed on the community of the reasons. The

representation of the petitioner-appellant has been rejected vide order dated 8.7.2002 noticing that "way back in 1992 due to dispute raised by three parties M/s Anand Food Products, M/s Kewal Industries and M/s Vaibhav Electronics by filing writ petitions before Rajasthan High Court, Jodhpur site was visited by the then MD and it was observed that it may not be possible to carve out smaller plots due to high tension line passing through the land, this land can be put in auction."

Obviously, decision of the RIICO in 1992 was taken not to allot the plot in question by application but by way of auction. The distinction, if any, was to be made when the decision was rendered in 2002, directing the parties for making representation seeking allotment of plot No.64-B whether partly or as a whole. For the very similar reasons, the representation of M/s Anand Food Products was rejected by order dated 8.7.2002 – the date on which the representation of the petitioner appellant was also rejected. The Court dismissing the appeal observed that it need no elaboration that petitioner does not have vested right to claim allotment of an industrial plot on any particular site merely on submission of application for such allotment. The Rules clearly leans in favour of the Corporation that it can reserve some plots for entertaining individual applications for allotment or to dispose of any plot at public

auction. The Court also noticed that “we have also noticed that the Executive Director of the RIICO has informed in August, 1992 to the petitioner that the said plot was stated to be alloted through auction, therefore, no land in terms of R.5 or in any sense of the terms could be allotted to the applicant full or in any part of 4000 Sq. Meters which was sanctioned in 1992 as industrial plot. Referring to the order passed in case of M/s Anand Food Product, the Court observed that “the impugned order clearly gives out this picture that when the petitioner had made an application, no plot was available for allotment in response to the application and when ultimately plot was sanctioned behind New Industrial Area, it was reserved for allotting through auction.”

Thus, it being within the domain of the Corporation whether to make certain land available for setting up an industry merely on submission of an application or to dispose of land available to it by auction, and once the Corporation had decided the land to be allotted by auction, the petitioner's contention that he had to be allotted plot in question on application, does not survive for consideration and no mandamus can be issued to the Corporation on the question whether to make allotment on submission of application or auction. On principle, there is, therefore, no distinction.

Thus, in our opinion, the learned Single Judge was right in dismissing the writ petition following the decision rendered in M/s Anand Food Products.

The appeal fails and is hereby dismissed. No costs.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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